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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE WESTERN DISTRICT OF TEXAS**
14 **AUSTIN DIVISION**

15 Matthew McDermott,

16 Plaintiff,

17 v.

18 PRINT Holdings LLC,

19 Defendant.

20 Case No: 1:21-cv-01137

21 **COMPLAINT**
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff Matthew McDermott (“*Plaintiff*”), by and through its undersigned counsel, for its
24 Complaint against Defendant PRINT Holdings LLC (“*Defendant*”) states and alleges as follows:

25 **INTRODUCTION**

26 1. This action seeks to recover damages for copyright infringements
27 2. Plaintiff herein creates photographic images and owns the rights to these images
28 which Plaintiff licenses for various uses including online and print publications.

29 3. Defendant owns and operates a website known as www.printmag.com (the
30 “*Website*”).

31 4. Defendant, without permission or authorization from Plaintiff actively copied,
32 stored, and/or displayed Plaintiff’s Photograph on the Website and engaged in this misconduct
33 knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Matthew McDermott is an individual who is a citizen of the State of New York and maintains a principal place of business at 23-38 33rd Street, Astoria, Queens in New York City, New York.

6. Upon information and belief, Defendant PRINT Holdings LLC, is a Texas limited liability company with a principal place of business at 3706 Stevenson Avenue, Austin in Travis County, Texas and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claim pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over PRINT Holdings LLC because it maintains its principal place of business in Texas.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because PRINT Holdings LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff’s photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. Upon information and belief, PRINT Holdings LLC is the registered owner of the Website and is responsible for its content.

1 15. Upon information and belief, PRINT Holdings LLC is the operator of the Website
2 and is responsible for its content.

3 16. The Website is a popular and lucrative commercial enterprise.

4 17. The Website is monetized in that it contains paid advertisements and, upon
5 information and belief, Defendant profits from these activities.

6 18. On April 12, 2021, Plaintiff Matthew McDermott authored a photograph of Chef
7 Daniel Boulud standing outside the Le Pavillon restaurant (the “*Photograph*”). A copy of the
8 Photograph is attached hereto as Exhibit 1.

9 19. Plaintiff applied to the USCO to register the Photograph on or about June 23, 2021
10 under Application No. 1-10592288765.

11 20. The Photograph was registered by the USCO on June 23, 2021 under Registration
12 No. VA 2-257-294.

13 21. On August 19, 2021, Plaintiff observed the Photograph on the Website in an article
14 dated June 23, 2021. Copies of the screengrabs of the Website including the Photograph are
15 attached hereto as Exhibit 2 (*Exhibit 2-Infringement #1-2*).

16 22. The Photograph was displayed at URL: <https://www.printmag.com/post/love-war-s-branded-materials-for-chef-daniel-boulud-s-ambitious-new-restaurant-le-pavillon>.

17 23. The Photograph was stored at URL: https://i2.wp.com/www.printmag.com/wp-content/uploads/2021/06/fcd5a_7d35d41b67704beb8038723859e8a159mv2-1.jpg and at URL:
18 https://i0.wp.com/www.printmag.com/wp-content/uploads/2021/06/fcd5a_7d35d41b67704beb8038723859e8a159mv2.jpg.

22 24. Without permission or authorization from Plaintiff, Defendant volitionally
23 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph as is set forth in
24 Exhibit “1” on the Website.

25 25. Upon information and belief, the Photograph was copied, stored and displayed
26 without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter singularly
27 the “*Infringement*” and collectively the “*Infringements*”).

1 26. The Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
2 tangible medium of expression that was sufficiently permanent or stable to permit it to be
3 communicated for a period of more than a transitory duration and therefore constitutes a specific
4 Infringement. 17 U.S.C. §106(5); *Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th
5 Cir. 2007).

6 27. Each Infringement is an exact copy of the vast majority of Plaintiff's original image
7 that was directly copied and stored by Defendant on the Website.

8 28. Upon information and belief, Defendant takes an active and pervasive role in the
9 content posted on its Website, including, but not limited to copying, posting, selecting,
10 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

11 29. Upon information and belief, Defendant directly contributes to the content posted
12 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
13 including but not limited to Chloe Gordon whereby Gordon's LinkedIn page lists her as a “Content
14 Editor & Social Media Manager” (“*Employees*”).

15 30. Upon information and belief, at all material times the Employees were acting within
16 the course and scope of their employment when they posted the Infringements.

17 31. Upon information and belief, at all material times the Employees were acting within
18 the course and scope of their agency when they posted the Infringements.

19 32. Upon information and belief, the Photograph was willfully and volitionally posted
20 to the Website by Defendant's Employees.

21 33. Upon information and belief, the Infringements were not posted at the direction of
22 a “user” as that term is defined in 17 U.S.C. §512(c).

23 34. Upon information and belief, Defendant engaged in the Infringements knowingly
24 and in violation of applicable United States Copyright Laws.

25 35. Upon information and belief, Defendant has the legal right and ability to control
26 and limit the infringing activities on its Website and exercised and/or had the right and ability to
27 exercise such right.

36. Upon information and belief, Defendant monitors the content on its Website.

37. Upon information and belief, Defendant has received a financial benefit directly attributable to the Infringements.

38. Upon information and belief, the Infringements increased traffic to the Website and, in turn, caused Defendant to realize an increase in its advertising revenues.

39. Upon information and belief, a large number of people have viewed the unlawful copies of the Photograph on the Website.

40. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

41. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

42. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(*Direct Copyright Infringement, 17 U.S.C. §501 et seq.*)

43. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

44. The Photograph is an original, creative work in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

45. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

46. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

47. Defendant's reproduction of the Photograph and display of the Photograph constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

48. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Photograph of the Plaintiff without Plaintiff's consent or authority, by using it in the infringing article on the Website.

49. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c).

50. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

51. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain Infringements of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

52. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
 - b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in

1 an amount to be proven or, in the alternative, at Plaintiff's election, an award
2 for statutory damages against Defendant in an amount up to \$150,000.00
3 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
4 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any
5 infringing use of any of Plaintiff's works;
6 d. for costs of litigation and reasonable attorney's fees against Defendant
7 pursuant to 17 U.S.C. § 505;
8 e. for pre judgment interest as permitted by law; and
9 f. for any other relief the Court deems just and proper.

10 DATED: December 13, 2021

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